

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

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| IN THE MATTER OF APPLICATION |) | ORDER GRANTING |
| FOR PERMIT NO. 74-16187 IN THE NAME |) | JOINT MOTION TO AMEND |
| <u>OF KURT W. BIRD OR JANET E. BIRD</u> |) | SCHEDULING ORDER |

On October 12, 2018, Kurt W. Bird and Janet E. Bird (“Bird”) filed Application for Permit No. 74-16187 with the Idaho Department of Water Resources (“Department”). The application was protested by Idaho Conservation League, Idaho Department of Fish & Game (“IDFG”), Beyeler Ranches LLC, High Bar Ditch Association, Carl Ellsworth, Purcell Ranch Partnership (“Purcell Ranch”), Kerry Purcell, Penny Jane Ogden-Edwards (“Ogden-Edwards”), Lemhi Irrigation District, Lemhi Soil & Water Conservation District and the Idaho Water Resource Board (“IWRB”).

Bird is represented by attorney Robert Harris. IDFG and IWRB are represented by the Idaho Office of the Attorney General. Beyeler Ranches LLC, High Bar Ditch Association, Carl Ellsworth, Kerry Purcell and Lemhi Irrigation District (referred to in this order at the “Companies”) are represented by attorneys from Barker Rosholt & Simpson LLP.

The Department conducted a pre-hearing conference on April 16, 2019. The parties requested that an administrative hearing be held to decide the contested case. On April 23, 2019, the Department issued a *Notice of Hearing and Scheduling Order*, setting the case for a hearing to be held on August 28 and 29, 2019 in Salmon.

On July 15, 2019, IDFG and IWRB filed a *Motion to Amend Scheduling Order* (“Motion”). IDFG and IWRB asked the hearing officer to move the hearing date for the contested case from August 28-29, 2019 to October 3-4, 2019 and extend all of the pre-hearing deadlines by approximately five weeks.

On July 29, 2019, IDFG and IWRB filed a *Stipulation and Joint Motion to Amend Scheduling Order* (“Joint Motion”). The *Joint Motion* is intended to supersede and replace the *Motion* filed on July 15, 2019. Rather than change the hearing date, the *Joint Motion* proposes to simply shift some of the pre-hearing deadlines. The *Joint Motion* was signed by representatives for all parties except Purcell Ranch and Ogden-Edwards.

Rule 513 of the Department’s Rules of Procedure (IDAPA 37.01.01) states:

The presiding officer, or an authorized employee of the agency, may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a prehearing conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause.

The changes to the scheduling order proposed in the *Joint Motion* are minor and, if adopted, still allow the contested case to proceed expeditiously. The parties to the *Joint Motion* have demonstrated good cause for the changes. Therefore, the *Joint Motion* should be granted.

ORDER

IT IS HEREBY ORDERED that the *Joint Motion* filed by the parties (except for Purcell Ranch and Ogden-Edwards) is GRANTED. The administrative hearing continues to be scheduled for August 28 and 29, 2019 beginning at 9:30 am at the IDFG Conference Room in Salmon. The Scheduling Order for Application 74-16187 is amended as follows:

1. Expert reports or any reports or technical memos prepared by agency staff must be served on the other parties and the hearing officer on or before August 14, 2019.
2. Dispositive motions must be filed on or before July 31, 2019.
3. On or before August 14, 2019, each party must disclose to all other parties and the hearing officer, in writing, the identity of all witnesses that may testify for the party at the hearing.
4. On or before August 14, 2019, each party seeking to offer exhibits at the hearing shall serve on all parties and the hearing officer copies of all exhibits which may be offered at the hearing. Service of the proposed exhibits will be the method of providing copies to the parties as required by Rule 606 of the department's Rules of Procedure (IDAPA 37.01.01).
5. Rebuttal expert reports, if any are prepared, must be served on the other parties and the hearing officer on or before August 21, 2019.
6. To avoid duplication of exhibit numbers, the parties should use the following numbers for their proposed exhibits:

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|-----------------------------|--------------------|
| Applicants: | Exhibits 1 – 100 |
| Idaho Conservation League: | Exhibits 101 – 200 |
| IDFG/IWRB: | Exhibits 201 – 300 |
| Companies: | Exhibits 301 – 400 |
| Purcell Ranch: | Exhibits 401 – 450 |
| Penny Jane Ogden – Edwards: | Exhibits 451 – 500 |

**** Please note the changes to the assigned exhibit numbers. ****

7. To avoid duplication of exhibits, pursuant to Rule 602 of the department's Rules of Procedure (IDAPA 37.01.01), the hearing officer will take official notice of the following documents from the application file and department records. For ease of reference, these documents will be identified by the following exhibit numbers:

| | |
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| IDWR1 | Application for Permit 74-16187, as amended |
| IDWR2 | Notice of Protest - Idaho Conservation League |
| IDWR3 | Notice of Protest - Idaho Department of Fish & Game |
| IDWR4 | Notice of Protest - Beyeler Ranches LLC |
| IDWR5 | Notice of Protest - High Bar Ditch Association |
| IDWR6 | Notice of Protest - Carl Ellsworth |
| IDWR7 | Notice of Protest - Purcell Ranch Partnership |
| IDWR8 | Notice of Protest - Kerry Purcell |
| IDWR9 | Notice of Protest - Penny Jane Ogden-Edwards |
| IDWR10 | Notice of Protest - Lemhi Irrigation District. |
| IDWR11 | Notice of Protest - Lemhi Soil & Water Conservation District |
| IDWR12 | Notice of Protest - Idaho Water Resource Board |
| IDWR13 | Wild & Scenic Agreement (August 2004) available at: https://idwr.idaho.gov/water-rights/wild-and-scenic-rivers/ "Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees" |
| IDWR14 | Water Rights 75-13316 and 77-11941 available at: https://idwr.idaho.gov/water-rights/wild-and-scenic-rivers/ "Partial Decree for the Salmon Wild & Scenic River" |
| IDWR15 | Water Right 74-14993 (Idaho Water Resource Board) |
| IDWR16 | Water Right 74-15613 (James and/or Paula Whittaker) |
| IDWR17 | Water Rights 74-32, 74-34, 74-35, 34-7165, 34-15930 (Bird) |

Dated this 30th day of July 2019.



James Cefalo
Water Resource Program Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2019, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

Document Served: Order Granting Joint Motion to Amend Scheduling Order

CERTIFIED MAIL Application for Permit No. 74-16187

Kurt W and Janet E Bird
56 Lower Texas Creek Rd
Leadore ID 83464

Robert Harris
Holden Kidwell Hahn & Crapo
PO Box 50130
Idaho Falls, ID 83405

Idaho Conservation League
Marie Callaway Kellner
PO Box 844
Boise ID 83701

Idaho Department of Fish & Game
Tom Curet
99 Highway 93 North
Salmon Id 83467

Deputy Attorney General
Ann Vonde or
Michael Orr
PO Box 83720
Boise ID 83720-0010

Travis Thompson
Barker Rosholt & Simpson LLP
PO Box 63
Twin Falls, ID 83303-0063

Beyeler Ranches LLC
PO Box 62
Leadore ID 83464

High Bar Ditch Association
Floyd Linger
PO Box 40
Tendoy ID 83468

Carl Ellsworth
Box 60
Leadore Id 83464

Purcell Ranch Partnership
Kerry Purcell
98 Purcell Lane
Leadore ID 83464

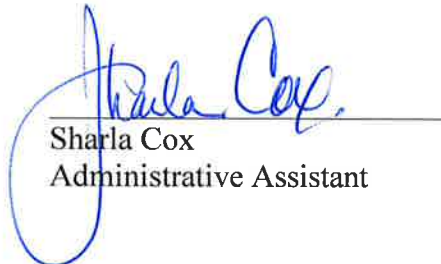
Kerry Purcell
1774 Lee Creek Rd
Leadore ID 83464

Idaho Water Resource Board
Cynthia Bridge Clark
PO Box 83720
Boise ID 83720-0098

Penny Jane Ogden-Edwards
2330 S 350 W
Perry UT 84302

Lemhi Irrigation District
Robert Loucks
260 Withington Creek Rd
Leadore ID 83464

Lemhi Soil & Water Conservation District
Mike Kossler
945 Riverfront Dr
Salmon ID 83467



Sharla Cox
Administrative Assistant